

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GERARD BELL,

Plaintiff,

v.

WASHINGTON SUPREME COURT,
et al.,

Defendants.

CASE NO. 3:22-CV-5613-DGE

ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE AND RENOTING
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

The District Court has referred Plaintiff Gerald Bell's pending Application to Proceed *In Forma Pauperis* (IFP) and proposed Complaint to United States Magistrate Judge David W. Christel pursuant to Amended General Order 02-19. On August 11, 2022, Plaintiff filed a proposed civil complaint and an application to proceed without paying the filing fee for a civil case. *See* Dkt. 1.

Standard for Granting Application for IFP. The district court may permit indigent litigants to proceed IFP upon completion of a proper affidavit of indigency. *See* 28 U.S.C. §1915(a). However, the court has broad discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

1 **Plaintiff's Application to Proceed IFP.** Plaintiff states that he is unemployed. *See* Dkt.

2 1. He states he has received \$12,000.00 from disability, unemployment, workers compensation
3 or public assistance for the past twelve months. *Id.* at 1. Plaintiff has no cash on hand and no
4 money in his bank accounts. *Id.* at 2. He has no assets and spends \$847.00 per month on
5 transportation and food. *Id.* Plaintiff states he is poverty stricken and homeless. *Id.*

6 **Review of the Complaint.** The Court has carefully reviewed the proposed complaint in
7 this matter. Because Plaintiff filed this proposed complaint *pro se*, the Court has construed the
8 pleadings liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v. Los*
9 *Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988).

10 In the proposed Complaint, Plaintiff alleges that in the summer of 2018 he contacted the
11 City of Tacoma because his leased living space had no running water for over three weeks. Dkt.
12 1-1 at 5. Plaintiff states that the City of Tacoma inspected his space and declared it uninhabitable
13 because of “water and mold in the unit, and no running water” and forced Plaintiff to
14 immediately vacate. *Id.* Then, a different employee of the City of Tacoma assisted Plaintiff in
15 entering into an agreement to receive 2000 dollars of “funds for relocation”—which Plaintiff
16 alleges was an insufficient amount under the law—and to keep his pet and belongings in the
17 living space until August 31, 2018, while he arranged for a new place to live. *Id.*

18 Plaintiff states that when he return with a U-Haul to move his pet and his belongings his
19 pet ran into the street and was struck and killed by a hit and run driver. *Id.* As a result, Plaintiff
20 did not return to the living space until the next day, August 25, 20218, to complete his move. *Id.*
21 Upon arrival he Plaintiff was unable to enter and “noticed someone had broken into the unit”
22 prompting Plaintiff to call the police. *Id.* A Pierce County Police Officer responded and began an
23 investigation that lead to someone saying they changed the locks to the door, and then letting
24

1 Plaintiff in. *Id.* Plaintiff and the officer went upstairs where Plaintiff had stored his belongings
2 and Plaintiff noticed many things were missing, resulting in the officer preparing and issuing an
3 incident report. *Id.*

4 Plaintiff then filed a claim through non-party “Assurant Renters Insurance Company” but
5 it was denied “due to [non-party] landlord negligence of verifying actual damages.” Dkt. 1-1 at
6 5. Plaintiff states that his non-party landlord’s negligence restricted Plaintiff’s ability to present a
7 case to the Washington State Supreme Court. *Id.* Plaintiff then states that “[unidentified]
8 Defendant negligence exposed plaintiff to mold” that Plaintiff has been treated for “mold
9 exposure” and that Plaintiff has lost a limb “due to [being] made homeless and unable to obtain
10 essential needs of care through [the] pandemic.” *Id.*

11 Plaintiff reiterates that on August 7, 2018 the City of Tacoma coerced him into signing a
12 document and accepting an “insufficient amount of 2000 dollars” causing “mental distress and
13 triggering post-traumatic stress disorder”. *Id.* at 6.

14 Plaintiff alleges that he sought redress from the Pierce County Superior Court, which
15 denied relief. *Id.* Plaintiff alleges that he appealed to the Washington State Court of Appeals,
16 which denied his appeal on February 8, 2022. *Id.* Finally, Plaintiff alleges that he appealed to the
17 Washington State Supreme Court, which denied review on August 10, 2022. *Id.*

18 Plaintiff names as Defendants the Washington State Supreme Court, the Washington
19 State Court of Appeals, the Pierce County Superior Court, and the City of Tacoma. Dkt. 1-1 at 1.

20 ***Sua Sponte Dismissal.*** The Court must subject each civil action commenced pursuant to
21 28 U.S.C. § 1915(a) to mandatory screening and order the *sua sponte* dismissal of any case that
22 is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks
23 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);
24

1 *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. §
 2 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir.
 3 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to *sua*
 4 *sponte* dismiss an IFP complaint that fails to state a claim). An IFP complaint is frivolous if “it
 5 ha[s] no arguable substance in law or fact.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368,
 6 1369 (9th Cir. 1987) (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also*
 7 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

8 A *pro se* plaintiff’s complaint is to be construed liberally, but like any other complaint it
 9 must nevertheless contain factual assertions sufficient to support a facially plausible claim for
 10 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550
 11 U.S. 544, 570 (2007)). A claim for relief is facially plausible when “the plaintiff pleads factual
 12 content that allows the court to draw the reasonable inference that the defendant is liable for the
 13 misconduct alleged.” *Iqbal*, 556 U.S. at 678.

14 **Analysis of Plaintiff’s Claims.** Plaintiff’s proposed Complaint suffers from several
 15 deficiencies requiring dismissal if not corrected in a proposed amended complaint.

16 I. Statute of Limitations

17 Plaintiff alleges this Court has jurisdiction over his proposed Complaint pursuant to 42
 18 U.S.C. § 1983. Dkt. 1-2 at 1.

19 A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983 does not
 20 contain a statute of limitations. “Thus, the federal courts [] apply the applicable period of
 21 limitations under state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654
 22 F.2d 546, 547 (9th Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations
 23
 24

1 period identified in Revised Code of Washington 4.16.080(2) is the applicable statute of
2 limitations for Section 1983 cases in Washington. 654 F.2d at 547; *see* R.C.W. § 4.16.080(2).

3 The Court also applies the forum state’s law regarding equitable tolling for actions
4 arising under Section 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington,
5 courts permit equitable tolling “when justice requires.” *Millay v. Cam*, 135 Wash.2d 193, 206
6 (1998). “The predicates for equitable tolling are bad faith, deception, or false assurances by the
7 defendant and the exercise of diligence by the plaintiff.” *Id.* Courts “typically permit equitable
8 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
9 neglect.” *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).
10 Washington State also allows for a tolling period when a person is imprisoned on a criminal
11 charge prior to sentencing. *See* R.C.W. § 4.16.190; *see also Williams v. Holevinski*, 2006 WL
12 216705, *2 (E.D. Wash. July 31, 2006).

13 Although the statute of limitations is an affirmative defense which normally may not be
14 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma*
15 *pauperis* complaint where the defense is complete and obvious from the face of the pleadings or
16 the Court’s own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

17 Plaintiff alleges he was harmed in July and August of 2018. Dkt. 1-1 at 5. As such, based
18 on the allegations contained in his proposed Complaint Plaintiff had actual notice of the facts
19 related to the claims alleged in the Complaint by August 31, 2018, at the latest. Therefore, the
20 latest time for filing a lawsuit was August 31, 2021, or three years after Plaintiff knew or should
21 have known of the injury forming the basis of this action. *See Kimes v. Stone*, 84 F.3d 1121,
22 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or has reason to know of the
23 injury which is the basis of the action).

Plaintiff has not shown statutory or equitable tolling is applicable in this case. Therefore, Plaintiff must show cause why his proposed Complaint should not be dismissed because it is untimely.

II. Improper Defendants/ Failure to State a Claim

Assuming Plaintiff can overcome the statute of limitations bar, Plaintiff's proposed Complaint will still have to surmount other issues. The next one is that Plaintiff names several improper Defendants, and fails to state claims upon which relief could be granted as to potentially properly named Defendants.

A. Washington Supreme Court and Washington Court of Appeals

For the purposes of Section 1983 claims, a state is not a "person." *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Similarly, an agency or branch of state government, such as the state courts, is also not a "person" under Section 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990); *also Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam) (concluding that the suit against the state Board of Corrections was barred by the Eleventh Amendment). Accordingly, Plaintiff cannot state a claim against the Washington Supreme Court or the Washington Court of Appeals. These Defendants must be dismissed from this case.

B. Pierce County Superior Court

Plaintiff also names the Pierce County Superior Court as a Defendant. *See* Dkt. 1-1 at 1. The Pierce County Superior Court is not a legal entity capable of being sued under Section 1983. However, Pierce County itself—a municipality—could be a proper defendant. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 (1978); *Wright v. Clark County Sheriff's Office*, 2016 WL 1643988, *2 (W.D. Wash. April 26, 2016).

1 If Plaintiff seeks to sue Pierce County he must name Pierce County as a Defendant and
2 allege facts sufficient to meet the required elements of a claim against a municipality and show
3 Pierce County violated his constitutional rights.

4 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
5 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
6 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
7 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
8 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
9 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
10 named defendants caused, or personally participated in causing, the harm alleged in the
11 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

12 A person acts under color of state law when he or she “exercises power possessed by
13 virtue of state law and made possible only because the wrongdoer is clothed with the authority of
14 state law.” *Id.* at 49. “The purpose of § 1983 is to deter state actors from using the badge of their
15 authority depriving individuals of their federally guaranteed rights.” *McDade v. West*, 223 F.3d
16 1135, 1139 (9th Cir. 2000) (citing *Wyatt v. Cole*, 504 U.S. 158, 161 (1992)).

17 To state a claim under 42 U.S.C. § 1983, Plaintiff must allege facts showing how a
18 defendant caused or personally participated in causing the harm alleged in the complaint. *Leer*,
19 844 F.2d at 633; *Arnold*, 637 F.2d at 1355. A person subjects another to a deprivation of a
20 constitutional right when committing an affirmative act, participating in another’s affirmative
21 act, or omitting to perform an act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743
22 (9th Cir. 1978).

Further, if Plaintiff were to name Pierce County as a Defendant, in order to set forth a Section 1983 claim against a municipality he must show municipal employees or agents acted through an official custom, pattern, or policy permitting deliberate indifference to, or violating, the plaintiff's civil rights, or that the entity ratified the unlawful conduct. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690-91 (1978). A plaintiff must show (1) deprivation of a constitutional right; (2) the municipality has a policy; (3) the policy amounts to deliberate indifference to a plaintiff's constitutional rights; and (4) the policy is the moving force behind the constitutional violation. *See Oviatt v. Pearce*, 954 F.3d 1470, 1474 (9th Cir. 1992).

C. City of Tacoma

Finally, Plaintiff names the City of Tacoma as a Defendant. *See* Dkt. 1-1 at 1.

A municipality may be the subject of a Section 1983 claim. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 (1978). However, a municipality may only be held liable if its policies are the "moving force [behind] the constitutional violation." *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (quoting *Monell*, 436 U.S. at 694). To recover, a Plaintiff must show that Defendant's employees or agents acted through an official custom or policy that permits violation of Plaintiff's civil rights, or that the entity ratified the unlawful conduct. *See Monell*, 436 U.S. at 690-91.

Plaintiff's proposed Complaint states that various employees of the City of Tacoma were involved in events that caused him harm, such as declaring his living space uninhabitable, "coercing" him into signing a document, and coercing him into accepting an "insufficient amount of 2000 dollars" causing "mental distress and triggering post-traumatic stress disorder". Dkt. 1-1 at 5-6. These statements do not allege City of Tacoma employees deprived Plaintiff of his civil rights pursuant to an official custom or policy, of that the City of Tacoma ratified the

1 alleged conduct. Accordingly, Plaintiff has not stated a claim for which this Court can offer a
2 remedy. *See Monell*, 436 U.S. at 690-91, 94.

3 If Plaintiff seeks to sue the City of Tacoma he must follow the same directions that apply
4 to suing Pierce County, outlined above.

5 **Leave to Amend.** Unless it is absolutely clear that no amendment can cure the defects of
6 a complaint, a *pro se* litigant is entitled to notice of the complaint's deficiencies and an
7 opportunity to amend prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245,
8 248 (9th Cir.1995). At this time, the Court finds Plaintiff may be able to cure some of the defects
9 of the proposed Complaint. Therefore, Plaintiff should be afforded an opportunity to amend his
10 proposed Complaint to attempt to cure the deficiencies.

11 **Decision on Application to Proceed IFP.** A district court may deny leave to proceed
12 IFP at the outset if it appears from the face of the proposed complaint that the action is frivolous
13 or without merit. *Minetti v. Port of Seattle*, 152 F.3d 1113 (9th Cir. 1998), quoting *Tripati v.*
14 *First Nat'l Bank & Trust*, 821 F. 2d 1368, 1370 (9th Cir. 1987).

15 Based upon the above analysis of the deficiencies in the proposed Complaint, the Court
16 finds it appropriate to re-note Plaintiff's application to proceed IFP (Dkt. 1) to October 21, 2022.

17 **Accordingly, it is hereby ORDERED that:**

18 Due to the deficiencies described above, if Plaintiff intends to pursue a Section 1983 civil
19 rights action in this Court, he must file a proposed amended complaint on the form provided by
20 the Court.

21 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
22 civil rights complaint and for service and send copies of this Order to Plaintiff.

1 The proposed amended complaint, if any, must be legibly rewritten or retyped in its
 2 entirety, it should contain the same case number, and it may not incorporate any part of the
 3 current proposed Complaint by reference. The proposed amended complaint will act as a
 4 complete substitute for the current proposed Complaint, and not as a supplement. *See Forsyth v.*
 5 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds by Lacey*
 6 *v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). The Court will screen the proposed amended
 7 complaint to determine whether it contains factual allegations linking each Defendant to the
 8 alleged violations of Plaintiff's rights. Attachments will not be considered as a substitute for the
 9 proposed amended complaint itself. Therefore, Plaintiff is directed to include all allegations and
 10 relevant facts in the body of the proposed amended complaint.

11 If Plaintiff fails to file a proposed amended complaint or fails to adequately address the
 12 issues raised herein on or before **October 21, 2022**, the undersigned will recommend dismissal
 13 of this case.

14 Plaintiff's application to proceed *in forma pauperis* (Dkt. 1) is **RENOTED** to **October**
 15 **21, 2022**.

16 Finally, the Clerk is direct to dismiss the Washington Supreme Court and the Washington
 17 Court of Appeals from this case.

18 Dated this 20th day of September, 2022.

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20 _____
 21 David W. Christel
 22 United States Magistrate Judge
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